



## 2009 Disability Priority Agenda

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The New York Association on Independent Living (NYAIL) is dedicated to improving the quality of life and safeguarding the civil rights of people with disabilities of all ages. Independent Living Centers (ILCs) are controlled and primarily staffed by people with disabilities and provide a variety of community-based services, such as peer counseling, independent living skills training, and assistance with medical needs, housing, education, employment and other necessary services that empower people with disabilities to live independent, fully integrated lives in their communities.

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## **2009 PUBLIC POLICY PRIORITIES**

### **HOUSING**

- Incorporate the housing provisions of Section 504 of the Rehabilitation Act into state law. *S.1533 (Morahan) of 2009*

Housing developers often fail to comply with Section 504's requirement to set aside a certain percentage of accessible units for people with disabilities when federal dollars are used for construction. By including these requirements in state law, the Department of Housing and Community Renewal (DHCR) will be fully empowered to enforce these requirements and ensure that the State is in compliance with federal standards.

- Establish standards for "visitability" in State law to require all newly constructed single-family houses, townhouses and ground-floor units of duplexes and triplexes built with public funds to be made accessible. *S.1499 (DeFrancisco) of 2009*

"Visitability" is a movement to change home construction practices so that new homes offer a few specific features that make the home easier for people with mobility impairments to live in and visit. The spirit of "visitability" is the belief that it is unacceptable that new homes continue to be built with gross barriers, given the ease of building basic access into the majority of new homes and the harsh effects major barriers have on people's lives, including physically unsafe conditions, social isolation, and unwanted institutionalization.

### **EMPLOYMENT**

- Shift state funding away from sheltered employment programs to more integrated options, with the goal of eventually phasing out State support for sheltered programs completely.

There are currently 52,229 individuals enrolled in segregated programs, including sheltered workshops, through OMRDD alone, with a total cost to the state of more than \$1 billion. The cost per person in a segregated program, according to OMRDD's figures, is \$21,309 compared to \$5,291 per person in supported employment. Everyone, regardless of disability, can work in a real job for real wages. All people with disabilities should have the opportunity to make informed choices about where to work and a continuum of employment services, leading to fully integrated employment, should be available. Supported and other integrated employment programs save substantial costs to the State and ensure people with disabilities are served in the most integrated setting possible.

## **CIVIL RIGHTS**

- Incorporate Title II of ADA into NYS Human Rights Law. *A.781-B (Paulin) and S.5396 (Huntley) of 2009*
- Waive the State's sovereign immunity to claims under the ADA and Section 504. *A.3651 (Lifton) and S.2833 (Krueger) of 2009*

The Americans with Disabilities Act (ADA) of 1990 and Section 504 of the Rehabilitation Act of 1973 each provide comprehensive protection for the civil rights of people with disabilities under federal law. It is essential that New Yorkers with disabilities are assured that the provisions of Title II of the ADA are incorporated into state law. Title II provides protections against discrimination on the basis of disability in services provided by public entities, including state and local governments. This bill would clarify the scope of protections against discrimination on the basis of disability by these entities, including in the provision of services, programs and activities. Public entities would be required to make reasonable accommodations and individuals with disabilities would gain critical access to the administrative enforcement mechanisms through the State Division of Human Rights. It is essential that New York State also ensure that the State's immunity to suit under the ADA and Section 504 is waived.

## **EDUCATION**

- Establish a definition and standard for physical restraint in public schools. Require documentation by the school and written notification to the parent when restraint is used. *A.1862 (Nolan) of 2009*

Students with disabilities are especially vulnerable to inappropriate use of restraints. Physical restraints should be used only in those situations when a child poses an imminent risk of harm to self or others. A single, uniform standard for restraint of students in public schools should be established, including identifying the most effective, least restrictive, and safest techniques for modification of a child's behavior, emphasizing de-escalation techniques to avoid the use of physical force. The use of restraint must be fully documented by the school and parents must be notified in writing. School personnel should receive training on the proper use of physical restraint and alternatives to their use.

## **TRANSPORTATION**

- Require transportation service providers, such as taxis, limousines and shuttle services, to purchase accessible vehicles or otherwise ensure that they have the capacity to serve people with disabilities. *A.5549 (Titus) and S.4011 (Morahan) of 2009*

The limited availability of accessible transportation services is a major barrier faced by individuals with disabilities throughout the state, often leading to

unemployment, the inability to access medical care, and isolation from friends, family, and full community participation.

## **MENTAL HEALTH**

- Amend state Social Services Law Section 384-b to eliminate subdivisions (4)(c) and (6)(a-e), which permit termination of parental rights on the basis of mental illness or mental retardation. *S. 2835 (Huntley) and A.6668 (Rivera) of 2009*

Parents with psychiatric and intellectual disabilities are vulnerable to the loss of custody and termination of their parental rights because of a long-standing bias in State law. Since 1976, NYS Social Services Law has included as grounds for the termination of parental rights, the inability “by reason of mental illness or mental retardation, to provide proper and adequate care...” of a child. The use of these disability-related grounds for termination promotes the discriminatory belief that parents with such disabilities are unable to care for their children and creates a presumption that these parents are unfit. The safety of children is adequately protected, however, by other provisions of SSL 384-b allowing termination based on a parent’s behavior rather than their disability.

## **MOST INTEGRATED SETTING**

- Ensure that all individuals with disabilities have the right to choose and receive services in the most integrated setting. Establish a presumption that community-based services are more appropriate than institutional or segregated settings. Require all State agencies to promote such integration through a plan and annual report. *A.5112 (Destito) and S.3265 (Griffo) of 2009*

Under the 1999 US Supreme Court *Olmstead* decision, people with disabilities are entitled to receive the services and supports they need to live in the community and avoid unwanted placement in nursing homes and other institutions. The impact of the *Olmstead* decision has not been fully realized in New York, in terms of facilitating the transition to fully integrated community-based services, in spite of some recent progress made by the State’s Most Integrated Setting Coordinating Council (MISCC). The long-standing financial and policy bias toward institutional and segregated placements by New York’s disability service systems, including Medicaid, continues to exist, leading to unnecessary and costly institutionalization and segregation of people with disabilities. This bill would require State-operated and funded service providers to demonstrate why placement of an individual in an institutional or segregated setting is necessary, creating a presumption that community-based services are the most appropriate, and leading to substantial cost savings to the State in Medicaid and other state-funded services.

## **WHY INDEPENDENT LIVING CENTERS ARE ESSENTIAL**

As New York strives to cope with historic budget shortfalls, there is an opportunity to make systemic reforms to ensure that services and supports for people with disabilities are available in the most integrated setting, as required by the US Supreme Court's *Olmstead* decision. Substantial cost savings can result from shifting State funding from institutional and other segregated services to fully integrated services and supports in the community – for example, through Medicaid and long term care reform that expands consumer directed service models, funding for integrated employment services rather than sheltered and other segregated models, and support for Independent Living Centers (ILCs) in their work to ensure individuals are served effectively in the most integrated setting by all service systems.

ILCs have saved New York taxpayers more than \$9 in institutionalization costs for every State dollar invested in ILCs. ILC services contribute to a net savings to the State of upwards of \$110 million each year as a result of avoided institutionalized care for people with disabilities. A recent national study of ILCs, funded by the federal Centers for Medicare and Medicaid Services supports this, finding that:

Centers for Independent Living continue to demonstrate value in assisting individuals with disabilities of all ages to gain needed skills and obtain needed supports to live independently in integrated community settings. Centers have proven to be effective partners in helping government comply with the Americans with Disabilities Act and save money by supporting individuals with disabilities to live in less-costly community settings. (Rutgers Center for State Health Policy, June 2008)

In 2008, NYAIL sponsored a statewide needs assessment, conducted by the Center for Governmental Research, which showed significant gaps in services and underserved geographic areas statewide. The report provides ample evidence of the need for additional ILC services in communities across the state, to lessen current inequities in the availability of ILC services and provide critical safety net services during the economic downturn. The report is available on NYAIL website at: [www.ilny.org](http://www.ilny.org) .